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File No.: 130637

Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

Corey Sipkin Photography LLC,

Plaintiff,

v.

What Pros Wear, Inc. d/b/a

What Pros Wear,

Defendant.

Case No:

COMPLAINT

DEMAND FOR JURY TRIAL

COMPLAINT

Plaintiff Corey Sipkin Photography LLC (“*Plaintiff*”), by and through its undersigned counsel, for its Complaint against defendant What Pros Wear, Inc. d/b/a What Pros Wear (“*Defendant*”) states and alleges as follows:

INTRODUCTION

1. This action seeks to recover damages for copyright infringement under the Copyright Act, 17 U.S.C §101 *et seq.*

2. Corey Sipkin (“*Sipkin*”) created a photograph of professional Major League Baseball player David Robertson (the “*Photograph*”) in which Plaintiff

owns the rights and licenses for various uses including online and print publications.

3. Defendant owns and operates a Facebook account with the name “@whatproswear” (“*Account 1*”).

4. Defendant owns and operates an Instagram account with the name “@whatproswear” (“*Account 2*”).

5. Defendant, without permission or authorization from Plaintiff, actively copied and displayed the Photograph on Account 1 and Account 2 (hereinafter the social media platforms set forth above are referred to collectively as the “*Accounts*”) and engaged in this misconduct knowingly and in violation of the United States copyright laws.

PARTIES

6. Corey Sipkin Photography LLC is a New York limited liability company and maintains its principal place of business in Kings County, New York.

7. Upon information and belief, defendant What Pros Wear, Inc. d/b/a What Pros Wear is a Delaware corporation with a principal place of business at 2807 Pleasant Hill Road, Sebastopol in Sonoma County, California.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction over the federal copyright infringement claims pursuant to 28 U.S.C. §1338(a) and 28 U.S.C. §1331.

9. This Court has personal jurisdiction over Defendant because it maintains its principal place of business in California.

10. Venue is proper under 28 U.S.C. §1391(b)(2) because Defendant does business in this Judicial District and/or because a substantial part of the events or omissions giving rise to the claim occurred in this Judicial District.

FACTS COMMON TO ALL CLAIMS

A. Plaintiff's Copyright Ownership

11. Plaintiff is a professional photography company which is the legal and

1 rightful owner of certain photographs which Plaintiff commercially licenses.

2 12. Plaintiff has invested significant time and money in building Plaintiff's
3 photograph portfolio.

4 13. Plaintiff has obtained active and valid copyright registrations from the
5 United States Copyright Office (the "*USCO*") which cover many of Plaintiff's
6 photographs while many others are the subject of pending copyright applications.

7 14. Plaintiff's photographs are original, creative works in which Plaintiff
8 owns protectable copyright interests.

9 15. On March 6, 2023, Sipkin first published the Photograph. A copy of the
10 Photograph is attached hereto as Exhibit 1.

11 16. In creating the Photograph, Sipkin personally selected the subject
12 matter, timing, lighting, angle, perspective, depth, lens, and camera equipment used
13 to capture the image and made each and every artistic determination necessary for
14 the creation of the work.

15 17. On March 26, 2023, the Photograph was registered by the USCO under
16 Registration No. VA 2-344-087.

17 18. Sipkin created the Photograph with the intention of it being used
18 commercially and for the purpose of display and/or public distribution.

19 19. Sipkin published the Photograph by commercially licensing it to the
20 New York Post for the purpose of display and/or public distribution.

21 20. Plaintiff acquired the rights in and to the Photograph by way of written
22 assignment.

23 **B. Defendant's Infringing Activity**

24 21. Defendant is the registered owner of the Accounts and is responsible
25 for their content.

26 22. Defendant is the operator of the Accounts and is responsible for their
27 content.
28

1 23. The Accounts are key components of Defendant's popular and lucrative
2 commercial enterprise.

3 24. The Accounts are monetized in that they promote the business and sell
4 merchandise to the public and, on information and belief, Defendant profits from
5 these activities.

6 25. Upon information and belief, Defendant has not implemented adequate
7 internal policies to verify copyright ownership before content use, indicating a gross
8 negligence in legal compliance, which is essential for a company with Defendant's
9 reach, capabilities, and level of sophistication.

10 26. Upon information and belief, Defendant's internal policies, if any, are
11 either not designed to verify copyright ownership before content use or are
12 systematically ignored, indicating a willful, recurring disregard for copyright
13 compliance.

14 27. Defendant's failure to adopt or effectively enforce internal copyright
15 policies, if any, indicates *de facto* willful infringement.

16 28. On or about May 9, 2023, Defendant displayed the Photograph on the
17 Accounts as part of social media posts at URLs:
18 <https://www.facebook.com/reel/1263960634262331> (“*Infringement 1*”) and
19 <https://www.instagram.com/p/CsChGGhtQWz/> (“*Infringement 2*”). Copies of
20 screengrabs of the Accounts including the Photograph are attached hereto
21 collectively as Exhibit 2.

22 29. Without permission or authorization from Plaintiff, Defendant
23 volitionally copied and displayed Plaintiff's copyright protected Photograph on the
24 Accounts.

25 30. Plaintiff discovered the Infringements on August 6, 2024.

26 31. Upon information and belief, the Photograph was copied and displayed
27 by Defendant without license or permission, thereby infringing on Plaintiff's
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1 copyrights in and to the Photograph (hereinafter the unauthorized uses set forth
2 above are referred to collectively as the “*Infringements*”).

3 32. The Infringements include a URL (“*Uniform Resource Locator*”) for a
4 fixed tangible medium of expression that was sufficiently permanent or stable to
5 permit it to be communicated for a period of more than a transitory duration and
6 therefore constitutes a specific infringement.

7 33. The Infringements are exact copies of Plaintiff's original image that
8 were directly copied and displayed by Defendant on the Accounts.

9 34. Upon information and belief, Defendant takes an active and pervasive
10 role in the content posted on its Accounts, including, but not limited to copying,
11 posting, selecting, commenting on, and/or displaying images including but not
12 limited to Plaintiff's Photograph.

13 35. Upon information and belief, the Photograph was willfully and
14 volitionally posted to the Accounts by Defendant.

15 36. Upon information and belief, Defendant was aware of facts or
16 circumstances from which the determination regarding the Infringements was
17 apparent. Defendant cannot claim that it was not aware of the infringing activities,
18 including the specific Infringements which form the basis of this complaint, since
19 such a claim would amount to only willful blindness to the Infringements on the part
20 of Defendant.

21 37. Upon information and belief, Defendant engaged in the Infringements
22 knowingly and in violation of applicable United States copyright laws.

23 38. Upon information and belief, Defendant has the legal right and ability
24 to control and limit the infringing activities on its Accounts and exercised and/or had
25 the right and ability to exercise such right.

26 39. Upon information and belief, Defendant monitors the content on its
27 Accounts.
28

1 40. Upon information and belief, Defendant has received a financial benefit
2 directly attributable to the Infringements.

3 41. Upon information and belief, the Infringements increased traffic to the
4 Accounts and, in turn, caused Defendant to realize an increase in its business
5 revenues and/or merchandise sales.

6 42. Upon information and belief, a large number of people have viewed the
7 unlawful copies of the Photograph on the Accounts.

8 43. Upon information and belief, Defendant at all times had the ability to
9 stop the reproduction and display of Plaintiff's copyrighted material.

10 44. Defendant's use of the Photograph harmed the actual market for the
11 Photograph.

12 45. Defendant's use of the Photograph, if widespread, would harm
13 Plaintiff's potential market for the Photograph.

14 46. On August 15, 2024, Plaintiff, via counsel, served a letter seeking to
15 address the complaints contained herein concerning Defendant's infringement of
16 Plaintiff's rights-protected work.

17 47. On September 16, 2024, Plaintiff, via counsel, served a second letter
18 seeking to address the complaints contained herein concerning Defendant's
19 infringement of Plaintiff's rights-protected work.

20 48. Despite Plaintiff's efforts and willingness to address Defendant's
21 infringing activity, Defendant failed to respond, and Plaintiff was forced to seek
22 judicial intervention for Defendant's infringing activity.

23 49. As a result of Defendant's misconduct, Plaintiff has been substantially
24 harmed.

25 **FIRST COUNT**

26 *(Direct Copyright Infringement, 17 U.S.C. §501 et seq.)*

27 50. Plaintiff repeats and incorporates by reference the allegations contained
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1 in the preceding paragraphs, as though set forth in full herein.

2 51. The Photograph is an original, creative work in which Plaintiff owns a
3 valid copyright.

4 52. The Photograph is properly registered with the USCO and Plaintiff has
5 complied with all statutory formalities under the Copyright Act and under
6 regulations published by the USCO.

7 53. Plaintiff has not granted Defendant a license or the right to use the
8 Photograph in any manner, nor has Plaintiff assigned any of its exclusive rights in
9 the copyright to Defendant.

10 54. Without permission or authorization from Plaintiff and in willful
11 violation of Plaintiff's rights under 17 U.S.C. §106, Defendant improperly and
12 illegally copied, reproduced, distributed, adapted, and/or publicly displayed works
13 copyrighted by Plaintiff thereby violating one of Plaintiff's exclusive rights in its
14 copyrights.

15 55. Defendant's reproduction of the Photograph and display of the
16 Photograph constitutes willful copyright infringement.

17 56. Upon information and belief, Defendant willfully infringed upon
18 Plaintiff's copyrighted Photograph in violation of Title 17 of the U.S. Code, in that
19 Defendant used, published, communicated, posted, publicized, and otherwise held
20 out to the public for commercial benefit, Plaintiff's original and unique Photograph
21 without Plaintiff's consent or authority, by using it on the Accounts.

22 57. As a result of Defendant's violations of Title 17 of the U.S. Code,
23 Plaintiff is entitled to an award of actual damages and disgorgement of all of
24 Defendant's profits attributable to the infringements as provided by 17 U.S.C. § 504
25 in an amount to be proven or, in the alternative, at Plaintiff's election, an award for
26 statutory damages against Defendant for each infringement pursuant to 17 U.S.C. §
27 504(c).
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1 58. As a result of the Defendant's violations of Title 17 of the U.S. Code,
2 the court in its discretion may allow the recovery of full costs as well as reasonable
3 attorney's fees and costs pursuant to 17 U.S.C. § 505 from Defendant.

4 59. As a result of Defendant's violations of Title 17 of the U.S. Code,
5 Plaintiff is entitled to injunctive relief to prevent or restrain infringement of
6 Plaintiff's copyright pursuant to 17 U.S.C. § 502.

7 **JURY DEMAND**

8 60. Plaintiff hereby demands a trial of this action by jury.

9 **PRAYER FOR RELIEF**

10 **WHEREFORE**, Plaintiff respectfully requests judgment as follows:

11 That the Court enters a judgment finding that Defendant has infringed on
12 Plaintiff's rights to the Photograph in violation of 17 U.S.C. §501 *et seq.* and
13 therefore award damages and monetary relief as follows:

- 14 a. finding that Defendant infringed Plaintiff's copyright interest in
15 and to the Photograph by copying and displaying it without a
16 license or consent;
- 17 b. for an award of actual damages and disgorgement of all of
18 Defendant's profits attributable to the infringements as provided
19 by 17 U.S.C. § 504(b) in an amount to be proven or, in the
20 alternative, at Plaintiff's election, an award for statutory damages
21 against Defendant for each infringement pursuant to 17 U.S.C. §
22 504(c), whichever is larger;
- 23 c. for an order pursuant to 17 U.S.C. § 502(a) enjoining Defendant
24 from any infringing use of any of Plaintiff's works;
- 25 d. for costs of litigation and reasonable attorney's fees against
26 Defendant pursuant to 17 U.S.C. § 505;
- 27 e. for pre-judgment interest as permitted by law; and
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f. for any other relief the Court deems just and proper.

DATED: September 20, 2024

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